

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

FLYZONE, LLC,
Plaintiff,

v.

LYNDA J. SHARPE,
Defendant.

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Civil Action No. 3:19-CV-198

DEFENDANT SHARPE'S NOTICE OF REMOVAL

1. This Notice of Removal is filed under 28 U.S.C. § 1441 based on diversity of citizenship.

I. BACKGROUND

2. Plaintiff's Original Petition was filed in state court and assigned to the 210th Judicial District Court under Cause No. 2019-DCV-2383.¹

3. Plaintiff asserts state law contract claims, alleging that Defendant Sharpe is not entitled to accelerate payment or initiate foreclosure proceedings under a promissory note.²

4. Written notice of removal has been given to Plaintiff and the state court clerk.

5. Suit was filed on June 24, 2019,³ thus removal is timely under 28 U.S.C. § 1446(b)(1).

6. The El Paso Division of the Western District of Texas embraces the place where the state case was pending; thus, venue is proper under 28 U.S.C. §§ 1441(a) and 124(d)(3).

7. Sharpe answered in state court⁴ and reserves the right to plead further as permitted.

8. All documents filed in state court are attached as Exhibit A.

¹ See Exh. A, Plaintiff's Original Petition, P. 1.

² *Id.*, Parts VII-VIII.

³ *Id.*, P. 1.

⁴ See Exh. A, Sharpe's Original Answer.

II. BASIS FOR REMOVAL

9. This case is being removed based on diversity of citizenship under 28 U.S.C. § 1441(b).

A. Diversity of Citizenship

10. Plaintiff is a citizen of Texas and Washington. That is, Flyzone, LLC is a limited liability company whose members are Flyzone Texas Holding, Inc. and Flyzone El Paso, LLC.⁵ Flyzone Texas Holding, Inc. is a Texas corporation whose principal place of business is in Texas.⁶ Flyzone El Paso, LLC⁷ is a limited liability company whose single member is Adams 1st Consultants, LLC, a limited liability company.⁸ Adams 1st Consultants, LLC's members are Lysa Adams and Bill Adams, citizens of Washington.⁹

⁵ Exh. B, Certificate of Formation of Flyzone, LLC, Art. 1 (Flyzone, LLC is a limited liability company); Exh. A, [Former] Intervenor's Petition, Exh. 3, Organizational Consent to Company Action Without Meeting, P. 1, ¶ 8 and P. 2 (Flyzone, LLC's members are Flyzone Texas Holding, Inc. and Flyzone El Paso, LLC).

⁶ Exh. C, Certificate of Formation of Flyzone Texas Holding, Inc., Art. 1 (Flyzone Texas Holding, Inc. is a Texas corporation); *id.*, Art. 2 and Exh. D, Texas Secretary of State record for Flyzone Texas Holding, Inc. (Flyzone Texas Holding, Inc.'s principal place of business is in Texas).

⁷ Note: Flyzone El Paso, LLC, was formerly a party (Intervenor), but nonsuited its claims in open court on July 17, 2019. A nonsuit is effective immediately without further action by the nonsuiting party or the court. *FKM P'ship v. Bd. of Regents Univ. of Hous.*, 255 S.W.3d 619, 632-33 (Tex. 2008) ("[A] nonsuit extinguishes a case or controversy from 'the moment the motion is filed' or an oral motion is made in open court") (*quoting Univ. of Tex. Med. Branch at Galveston v. Estate of Blackmon ex rel. Shultz*, 195 S.W.3d 98, 100 (Tex. 2006)).

⁸ Exh. E, Washington Secretary of State record for Flyzone El Paso, LLC, P.1 (Flyzone El Paso, LLC is a limited liability company); Exh. A, [Former] Intervenor's Petition, Part IV, ¶ 4 (Flyzone El Paso, LLC's single member is Adams 1st Consultants, LLC); Exh. F, Washington Secretary of State record for Adams 1st Consultants LLC, P. 1 (Adams 1st Consultants, LLC is a limited liability company).

⁹ Exh. A, [Former] Intervenor's Petition, Part IV, ¶ 4 and Exh. G, Certificate of Formation of Adams 1st Consultants, LLC, P. 2 (Adams 1st Consultants, LLC's members are Lysa Adams and Bill Adams); Exh. B, Certificate of Formation of Flyzone, LLC, Art. 6 (Bill Adams resides in Washington); Exh. G, Certificate of Formation of Adams 1st Consultants, LLC, P. 1-2 (Lysa Adams resides in Washington).

11. Defendant Sharpe is a citizen of Canada.¹⁰

12. Thus, the parties are completely diverse.

B. Amount in Controversy

13. For a diversity case to be removable, the amount in controversy must exceed \$75,000.¹¹

Plaintiff seeks “over \$1 million,”¹² making this case removable.

III. CONCLUSION

14. Wherefore, Defendant Sharpe asks that this case be placed on the Court’s docket and for any other relief to which she may be justly entitled at law or in equity.

Respectfully submitted,

**MOUNCE, GREEN, MYERS,
SAFI, PAXSON & GALATZAN**
A Professional Corporation
P. O. Drawer 1977
El Paso, Texas 79999-1977
Phone: (915) 532-2000
Telefax: (915) 541-1597
little@mgmsg.com

By: /s/ Ryan Little
RYAN LITTLE
State Bar No. 24041349

Attorneys for Defendant
LYNDA J. SHARPE

¹⁰ Exh. A, Plaintiff’s Original Petition, Part III (“Defendant is a natural person and resident of Vancouver, British Columbia, Canada”).

¹¹ See 28 U.S.C. §§ 1441 and 1332(a).

¹² Exh. A, Plaintiff’s Original Petition, Part I.

CERTIFICATE OF SERVICE

In compliance with the Federal Rules of Civil Procedure, I certify that on July 22, 2019,
a true and correct copy of the foregoing document was served on:

James A. Martinez
JAMES A. MARTINEZ, PLLC
7170 Westwind Drive, Suite 201
El Paso, Texas 79912
(915) 543-9712
(915) 543-9718 (Fax)
martinezja@jmeplaw.com

Served via:

____ Facsimile
 X Certified Mail, RRR
____ Hand-Delivery

/s/ Ryan Little
Ryan Little